

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-216015 **DATE:** February 27, 1985  
**MATTER OF:** AVCO Corporation, Systems Division

**DIGEST:**

Protest that RFP did not provide sufficient information for protester to submit a competitive proposal is denied where the information it requested as necessary is not available to the agency.

The Systems Division of AVCO Corporation protests the award of a contract to Fiber Materials, Inc., under Department of the Navy request for proposals (RFP) No. N60921-84-R-0132. AVCO alleges that the information provided in the RFP was not sufficient to permit any offeror other than Fiber to submit a competitive proposal.

The protest is denied.

The RFP, issued to nine firms, requested proposals to develop manufacturing technology to fabricate high temperature carbon-carbon composite preforms. These preforms, after being developed, woven and fabricated, are used in manufacturing missile components.

At one time, the preforms were woven by hand. This process, however, has been automated so that certain components can now be woven by a computer-controlled machine. Fiber, in a prior sole-source contract with the Navy, developed the Ultraloom, an automated system on which to weave components. Under the protested RFP, the Navy sought proposals to extend the capability of the Ultraloom to weave three-dimensional components such as contoured rocket nozzles, thin-walled exit cones, and nosetips. The portions of the RFP involved in AVCO's protest, tasks 8 and 9 of the statement of work, concern this technology.

Task 8 of the RFP sought a modified automated yarn handling system, a radial rod insertion device, and a computer controller, to be added to the Ultraloom to enable it to manufacture three-dimensional missile components. Under

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task 9, the contractor is required to design and plan for nozzle fabrication, write a manufacturing plan, analyze the material design for rocket nozzles, and fabricate a contoured nozzle and an exit cone with the modified Ultraloom.

AVCO initially protested to the Navy that AVCO could not submit a proposal for tasks 8 and 9 unless the Navy supplied AVCO with the Ultraloom drawings, specifications and performance data. AVCO requested the Navy to provide this information and to extend the due date for proposal submission. The Navy denied AVCO's request based on its position that all the information required to submit a competitive proposal was supplied in the RFP, in response to an AVCO Freedom of Information Act request, or during an industry briefing conducted by Fiber. The Navy also advised AVCO that it did not possess the drawings, data and specifications which AVCO requested.

AVCO subsequently protested to our Office that the Navy's refusal to provide offerors with details of the Ultraloom precluded any firm other than Fiber from submitting a competitive proposal. The Navy has awarded the contract to Fiber notwithstanding the pendency of AVCO's protest.

This Office has consistently held that a procuring agency must provide offerors with sufficient information to compete intelligently and on an equal basis. John J. Moss, B-201753, Mar. 31, 1981, 81-1 C.P.D. ¶ 242. Where a protester alleges that a solicitation does not provide sufficient information to permit the submission of competitive proposals, the protester must demonstrate that the information it seeks is necessary to submit a proposal and is available to the agency. Id.

AVCO asserts that it cannot submit a proposal to modify the Ultraloom without the information it requested from the Navy. AVCO also contends that this information should have been available to the Navy because Fiber developed the Ultraloom under a sole-source contract with the Navy which incorporated the technical rights in data clause found at § 7-104.9 of the Defense Acquisition Regulation (DAR) (1976 ed.), providing:

"(b) Government Rights

(1) Unlimited Rights. The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract."

AVCO argues that even though the Navy apparently did not obtain the information pursuant to this clause, the regulatory requirement to maximize competition for federal contracts, see DAR, § 3-101, mandates that the Navy acquire this information now and provide it to other offerors interested in submitting proposals. AVCO argues that this Office should therefore require the Navy to procure the data from Fiber and use the data to resolicit its present requirement. To support this position, AVCO relies on Aero Corp. v. Department of the Navy, 540 F. Supp. 180 (D.D.C. 1982).

In response, the Navy states that AVCO did not need the information requested to submit a proposal. The Navy also denies that it has any information concerning the Ultraloom which has not been provided to AVCO. The Navy explains that while the contract under which Fiber developed the Ultraloom contained the rights in technical data clause, Fiber was required to give the Navy only that data which the Navy chose to purchase and listed on the Data Requirements List. The Navy states that the Ultraloom drawings, technical data and specifications were not on the list in Fiber's sole-source contract because in the Navy's opinion at the time that contract was awarded, this information would not be needed to conduct a competitive follow-on procurement.

We do not find that Aero provides authority for this Office to require the Navy to buy data which Fiber generated under a now completed contract and which Fiber now owns. In Aero, the Navy negotiated a sole-source contract with Lockheed Georgia Corporation to overhaul, over a period of years, planes Lockheed had manufactured. The original

contract was to overhaul 13 planes, and contained an option for the overhaul of 7 planes with possible follow-on contracts for 29 more. Subsequently, the Navy decided to execute the options and award sole-source contracts to Lockheed to overhaul all 49 planes. The Navy based its decision to take these actions on its belief that overhaul kits, which Lockheed would have to develop, would be required for any contractor other than Lockheed and that it would take Lockheed 36-48 months to develop the kits. Aero sought a court order enjoining the Navy from awarding the sole-source contracts to Lockheed and, at the court's requests, this Office issued a series of decisions concerning the legality of the Navy's actions.

We found that the Navy was justified in determining that a kit would have to be provided to any contractor other than Lockheed and in contracting with Lockheed, on a sole-source basis, to overhaul 15 planes. As to the remaining 34 planes, however, we found that contracts should be awarded to Lockheed only if, when it became time to overhaul these planes, the Navy, with Lockheed, had not yet developed the kits needed to solicit competition. See Aero Corporation--Navy Request for Advance Decision, B-194445.4, Mar. 27, 1981, 81-1 C.P.D. ¶ 229; B-194445.5, June 5, 1981; B-194445, Sept. 9, 1981. We stated that, pursuant to DAR, § 3-101(d), the Navy had an express duty to take steps to avoid a sole-source follow-on procurement for all the remaining planes. B-194445.5, supra. <sup>1/</sup>

The facts in Aero thus present a situation different from the situation in this protest. In Aero, Lockheed was performing a current contract under which the Navy could negotiate to obtain the data needed to design overhaul kits; Lockheed agreed to cooperate in developing the kits; and the kits were to be used to compete future contracts for overhaul work. See B-194445.5, supra.

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<sup>1/</sup> While the court interpreted our decision as requiring the Navy to procure the parts, data and tooling to conduct a competitive procurement, Aero, 540 F. Supp. at 189, we subsequently clarified our position as being that the Navy had a regulatory duty to foster competition, but that it was for the Navy to determine, in the first instance, the specific steps to be taken. B-194445, supra.

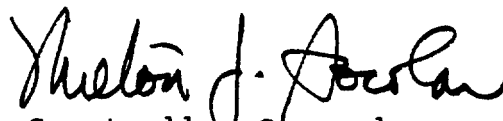
In the present case, however, the contract under which Fiber generated the Ultraloom data has been completed. AVCO has cited no case in which this Office has required an agency to purchase data under a completed contract (that did not contain a deferred ordering clause permitting the government to acquire data generated under the completed contract, see DAR, § 9-502). Therefore, even if AVCO needed the data to submit a proposal, AVCO's protest must be denied, since the Navy did not acquire the data, drawings and specifications pursuant to the contract under which Fiber developed the Ultraloom, and since there is no basis for the Navy to purchase the data now. See John J. Moss, B-201753, supra; Pioneer Parachute Co., Inc., B-190798, B-191007, June 13, 1978, 78-1 C.P.D. ¶ 431.

AVCO also has protested that the current contract awarded to Fiber does not require Fiber to provide the Navy with data, drawings and specifications concerning the modified Ultraloom. AVCO notes that Fiber has received sole-source contracts to develop the Ultraloom in the past and was the only offeror under the protested RFP. AVCO alleges, and the Navy does not deny, that the Navy intends to conduct follow-on Ultraloom procurements; AVCO argues that the Navy's failure to require data will perpetuate sole-source contract awards to Fiber.

We agree that the Navy has a duty to take whatever steps are practicable to avoid noncompetitive follow-on contract awards. There in fact have been a number of sole-source awards to Fiber to develop the Ultraloom and, despite the fact that the Navy originally determined that the Ultraloom specifications, data and drawings were not required to conduct a competitive procurement for further Ultraloom development and attempted to obtain competition for its present requirements, only Fiber submitted a proposal in response to the present RFP. Further, it appears that the Navy has not yet fully considered whether the data that might be generated in performing tasks 8 and 9 here will be necessary for further related procurements. Given these circumstances, we are recommending to the Secretary of the Navy by separate letter that the agency evaluate whether in order to conduct competitive follow-on procurements it will be necessary to provide offerors interested in submitting proposals with data generated under the present contract. If the Navy determines that such data will be

required, it should insure that the data is secured from Fiber. See Engineered Systems, Inc., B-195237, Dec. 14, 1979, 79-2 C.P.D. ¶ 408 (in which we found a sole-source award justified because the Air Force did not have sufficient data to conduct a competitive procurement but advised the Air Force to consider acquiring data so that future procurements could be competed).

The protest is denied.

  
Comptroller General  
of the United States